

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

United States of America :
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 v. : File No. 2:03 CR 58
 :
 Jemol Nesbitt :
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ORDER

The Report and Recommendation of the United States Magistrate Judge was filed April 13, 2007. Petitioner's objections were filed July 16, 2007.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b) (1); *Perez-Rubio v. Wyckoff*, 718 F.Supp. 217, 227 (S.D.N.Y. 1989). The district judge may "accept, reject, or modify, in whole or in part, the magistrate's proposed findings and recommendations." *Id.*

After careful review of the file, the Magistrate Judge's Report and Recommendation and the objections, this Court ADOPTS the Magistrate Judge's recommendations in full.

Nesbitt's motion to amend his § 2255 filing (Paper 68) is **GRANTED** and his motion pursuant to 28 U.S.C. § 2255 is **DENIED**.

Pursuant to Fed. R. App. P. 22(b), a certificate of appealability is DENIED because the petitioner has failed to make a substantial showing of denial of a federal right.

Furthermore, the petitioner's grounds for relief do not present issues which are debatable among jurists of reasons, which could have been resolved differently, or which deserve further proceedings. See e.g., Flieger v. Delo, 16 F.3rd 878, 882-83 (8th Cir.) cert. denied, 513 U.S. 946 (1994); Sawyer v. Collins, 986 F.2d 1493, 1497 (5th cir.), cert. denied, 508 U.S. 933 (1993).

Furthermore, it is certified that any appeal taken *in forma pauperis* would not be taken in good faith, pursuant to 28 U.S.C. § 1915(a)(3).

THIS CASE IS CLOSED.

Dated at Burlington, in the District of Vermont, this
19th day of July, 2007.

/s/ William K. Sessions III
William K. Sessions III
Chief Judge
U.S. District Court